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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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November 1, 2018

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Gerry White
J.S.I.D. File #16-0415
L.A.S.D. File #016-04189-6885-056

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 17, 2016, non-fatal shooting of Gerry White by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

By

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Arin Davidian, #[redacted]

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MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Gerry White
J.S.I.D. File #16-0415
L.A.S.D. File #016-04189-6885-056

DATE: November 1, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 17, 2016, non-fatal shooting of Gerry White by Los Angeles County Sheriff's Department (LASD) Deputy Arin Davidian. It is our conclusion that Davidian acted in lawful self-defense and used reasonable force to apprehend a dangerous fleeing felon.

The District Attorney's Command Center was notified of the shooting on August 17, 2016, at approximately 3:54 p.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports submitted to this office by Sergeant Timothy Cain and Detective Dean Camarillo, LASD, Homicide Bureau. Deputy Davidian provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

On August 17, 2016, shortly before 2:00 p.m., Gerry White boarded a Metro bus at Roscoe Boulevard and Hayvenhurst Avenue in the City of North Hills. While on the bus, White stabbed a male passenger in the neck and a female passenger in the arm. The attack was unprovoked. White exited the bus and boarded a second Metro bus travelling east on Roscoe Boulevard. The bus operator was advised of the stabbing over the radio and provided a suspect description. The operator observed White, who matched the suspect description, seated on the bus. The driver stopped the bus on Roscoe Boulevard at Ventura Canyon Avenue and advised dispatch.[1]

Uniformed LASD Deputies Christopher Soderlund, Javier Lomeli, Arin Davidian, Garrett Swailes and [redacted] responded from the original stabbing scene to Roscoe Boulevard and Ventura Canyon Avenue. A plan was made to clear the bus of passengers and locate White.

[1] This intersection is located in Panorama City.

Soderlund and Swailes were armed with Tasers and Lomeli was armed with a stun bag.[2] Davidian and [redacted] provided lethal coverage with their service weapons drawn. Soderlund and Swailes approached the front door of the bus and Davidian, Lomeli and [redacted] approached the rear door.

Statement of Deputy Arin Davidian

Davidian and Lomeli responded to the original call of a "person with a knife on a bus." In route, the call was updated to advise that a man had stabbed one person in the neck and another in the arm. While at the stabbing scene, the deputies were provided with a physical and clothing description of the suspect. Davidian and Lomeli then responded to Roscoe Boulevard and Ventura Canyon Avenue and observed the second Metro bus parked on the south side of the street. Soderlund was standing outside the bus armed with a Taser. Lomeli grabbed a stun bag. [redacted] and Swailes also arrived at the location.

The deputies decided to clear the bus in an attempt to locate the suspect. Davidian approached the rear door with his service weapon in his right hand. As he neared the bus, the rear door opened, catching him by surprise. Davidian observed White standing in the doorway with nothing in his hands. Believing that White did not pose a threat, Davidian holstered his weapon. Davidian told White, "Hey, man. Just come on out." White replied, "No. Why?" and stepped back from the door.

Concerned for the safety of the other passengers, Davidian stepped onto the bus and grabbed White's left arm with his left hand. White pulled from Davidian's grasp and simultaneously reached his right hand into his pocket. Davidian yelled, "Hey, stop! Let me see your hands!" as White removed a knife from his pocket. White charged toward Davidian while raising the knife. Davidian was an arm's length from White. Davidian jumped back onto the sidewalk as White exited the bus with the knife. In fear for his life, Davidian fired his service weapon three times, striking White.[3] White dropped the knife and fell to the sidewalk.

Based on the fact that White had already stabbed two people, Davidian believed White was attempting to stab and kill him. Davidian estimated that five seconds elapsed from the time the rear door opened to the shooting. Davidian described the knife as a folding knife with a gray handle. He did not see the blade protruding from White's hand and did not know whether the knife was opened. Davidian said, however, that it would have taken only a fraction of a second for White to open the weapon.

Statement of Deputy Javier Lomeli

Davidian approached the rear door of the bus with [redacted] Lomeli was positioned behind the rear door, armed with the stun bag. Soderlund was at the front of the bus. The rear door opened and White was standing in the doorway. Davidian attempted to contact White and told him to exit the bus. It appeared that White was going to step onto the sidewalk, but stepped back instead. Davidian reached for White's left hand as White reached into his front right pocket.

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[2] A stun bag is a 12-gauge shotgun that fires non-lethal beanbag rounds.

[3] An inspection of Davidian's service weapon verified that he fired three rounds.

White lunged toward Davidian with a knife in his right hand. The knife was raised to his waist and had a four-inch blade. Davidian was very close to White when White advanced out of the bus toward him. Davidian took two to three steps away from White, removed his service weapon and fired. At some time before firing, Davidian said, "Let me see your hands." White was hit by the gunfire and took several steps while holding his stomach. White then turned toward Davidian while still holding the knife. Fearing that White was about to stab Davidian, Lomeli fired one round from his stun bag, striking White. White fell to the ground and dropped the knife.

Statement of Deputy [redacted]

[redacted] drew her service weapon and approached the rear of the bus. Lomeli was to her right and Davidian was in front of her, approaching the rear door. The rear door opened and Davidian placed one foot on the bus and appeared to make contact with someone. The opened door blocked her view of the doorway. Davidian grabbed onto something or someone and a short struggle ensued. After the struggle, Davidian and White exited the bus. [redacted] did not know whether Davidian pulled White or whether White ran off the bus under his own power. At that time [redacted] heard approximately two gunshots. White fell to the ground onto his back and his shirt was saturated with blood. White did not have anything in his hands. [redacted] observed a knife beneath White's upper back as he moved around in pain on the sidewalk. [redacted] approached with her gun drawn and kicked the knife away from White. [redacted] holstered her service weapon and rendered medical aid to White.

Statement of Deputy Christopher Soderlund

At Soderlund's request, the bus operator opened the front door. Soderlund boarded the bus, followed by Swailes. Soderlund heard a commotion to the rear of the bus as he was searching for White. He observed White standing at the rear door. Soderlund only saw White's shoulders and head because the passengers standing in the aisle blocked his view. White lunged toward the rear door and disappeared from Soderlund's view as he passed through the doorway. Soderlund simultaneously heard two to three gunshots. Soderlund could not see White's hands as he lunged toward the door. Soderlund and Swailes exited the bus. White was lying on his back on the sidewalk outside the rear doors. Davidian had his service weapon pointed at White and said, "He's got a knife! Watch out, he's got a knife!" White was rocking back and forth in pain. [redacted] rendered aid to White until Fire Department personnel arrived on scene.

Statement of Deputy Garrett Swailes

Swailes followed Soderlund onto the bus through the front door. Swailes could not see down the aisle of the bus due to Soderlund's size and height. Passengers were also blocking his view. Swailes heard someone say, "There he is. He's towards the back." Two to three seconds later Swailes heard two gunshots. Swailes exited the bus and observed White lying on the sidewalk with blood on his shirt. Swailes assisted [redacted] in rendering aid to White.

Statement of [redacted]

[redacted] was standing at the rear door of the bus when it stopped on Roscoe Boulevard. Deputies arrived at their location. One deputy stood near the front door while two approached the rear door. A deputy signaled the bus driver to open the rear door. The door opened and [redacted] observed Davidian with a service weapon in his hand. White was seated somewhere in front of the back door. Davidian told White, "Come here. Come out and talk to me. Leave your bag there." White walked to the rear door, stopped next to [redacted] and asked, "For what?" Davidian grabbed White's left arm. White pulled away from Davidian then reached his left hand toward his rear pocket. [redacted] was on the right side of White and could not see his left hand. Davidian yelled, "Don't reach for anything!" Davidian fired one round when White continued to reach toward his rear pocket. White moved forward and tried to exit the bus while still reaching with his left hand. Davidian fired three more rounds at White. White fell to the ground and [redacted] observed a closed knife on the curb. A deputy kicked the knife away from White.

Statement of [redacted]

[redacted] works at the [redacted] located at [redacted][4] [redacted] was in the lobby cleaning when she observed two deputies enter the rear door of the bus and pull White from the bus. One deputy grabbed his collar and the other grabbed his arm. [redacted] did not hear the deputies give White any commands. White resisted the deputies by throwing his arms back and tried to back away from them. Davidian shot White one time after White was pulled from the bus. [redacted] did not see a knife in White's hands. White fell to the ground.

Statement of [redacted]

[redacted] was seated in the Flame Broiler restaurant facing Roscoe Boulevard. He observed deputies approach the bus with their firearms drawn. A deputy armed with a semiautomatic firearm and a deputy armed with a shotgun were at the rear door. Another deputy was at the front door. [redacted] heard deputies yell, "Come out! Get down!" Deputies grabbed White's left arm as White stood on the rear door step. White pulled his arm from the deputies. The deputies quickly backed away four feet from White at which time [redacted] heard two to three gunshots. White fell to the ground.

Statement of [redacted]

[redacted] boarded the bus with White. White was carrying a travel case or bag and walked to the back of the bus. After a short distance, the bus came to a stop. The driver told [redacted] that the bus was overloaded and they were waiting for a second bus. [redacted] exited the bus and smoked a cigarette on the sidewalk. Two patrol cars arrived and parked behind the bus. Two deputies went to the front door and two deputies went to the rear door. White appeared at the rear door and began to argue with the deputies. A deputy told White, "Please, we need you to calm down." White said something that [redacted] could not hear but he appeared agitated. A deputy on the left side of the door (Davidian) grabbed White's wrist. White went "wild" and

[4] The Metro bus came to a stop in front of a strip mall. The Flame Broiler is located in that strip mall.

began to wave his arms and kick his legs. Davidian, who was approximately three feet from White, fired four shots at White, striking him. White fell to the ground [redacted] did not see White in possession of any weapons.

Statement of [redacted]

[redacted] exited the bus after it stopped on Roscoe Boulevard and was standing on the sidewalk when deputies arrived. A male deputy armed with a shotgun and a female deputy entered the bus through the front door. A third deputy (Davidian) approached the rear door. White appeared at the rear door holding a Powerade bottle. Davidian grabbed White with his left hand and held his service weapon in his right hand. Davidian repeatedly told White to "go down" as he pulled White toward the ground. Davidian then fired four shots, causing White to fall to the ground.

Statement of [redacted]

[redacted] boarded the bus with her [redacted], [redacted] White was carrying a large bag which bumped into passengers as he walked to the rear of the bus. [redacted] and [redacted] sat in the second seat behind the rear door on the passenger side. A male and female deputy approached the bus shortly after it came to a stop and entered through the front door. A male deputy (Davidian) approached the rear door. [redacted] heard one of the deputies order White to exit the bus. White walked to the rear door. As Davidian grabbed White's arm, White pulled away from Davidian and reached behind his back.[5] [redacted] turned away from the commotion and heard two gunshots. She turned back and saw White lying on the ground outside of the bus. [redacted] began recording the scene with her cell phone. She observed a knife on the ground near White's back as he rolled from side to side. A female deputy kicked the knife away from White.

Statement of [redacted]

[redacted] was seated with [redacted] on the passenger side of the bus directly behind the rear door. White was already on the bus when they boarded. Approximately three minutes after the bus stopped, two deputies entered the bus through the rear door and began speaking with White. White walked to the rear door carrying a bag. White stepped back when one of the deputies grabbed his right arm. White placed his left arm behind his back and was shot twice by Davidian. White fell to the ground and [redacted] observed a knife near his back. A female deputy kicked the knife away from White.

Injury

White sustained multiple gunshot wounds to the torso and was transported and treated at Providence Holy Cross Medical Center.

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[5] [redacted] told investigators she observed White reach behind his back during a brief telephone interview before her in-person interview. The telephone interview was recorded. During her in-person interview [redacted] did not mention White reaching behind his back. Investigators called [redacted] for clarification and she stated that she did not recall seeing White reach behind his back.

Statement of Gerry White

Investigators contacted White at the hospital on August 24, 2016. After reading White his Miranda rights, White invoked his right to an attorney. As the detectives were leaving, White spontaneously stated, "It wasn't his fault. He was doing his job, that's all I can say. He was doing his job, that's all I can say. I was in a ruckus. You know, a guy tried to get me. I done what I do and just got shot, man."

Weapon



White possessed a stainless steel folding blade knife with a pocket clip and four-inch blade.

[redacted] Cellphone Video

A one minute, 42 second video clip was recorded by [redacted]fter the shooting. White is lying on his back on the sidewalk when the video begins. [redacted] covered with blood. Davidian is standing near White's feet, pointing his service weapon at him. White intermittently rolls over to his right side, revealing a silver folding knife beneath his upper back. While on his side, [redacted] appears in the video and kicks the knife toward the rear of the bus and out of view. The [redacted] appears to be closed.



Still photograph taken from [redacted] cellphone video showing the knife beneath White's back

Metro Bus Surveillance Video[6]

The video surveillance cameras on the Metro bus were set to record at a low frame rate.[7] The actions of White and Davidian at the rear door of the bus appear jagged when the video plays, and does not capture their continuous movement. The following is every frame captured on the video between the time Davidian appears at the open rear door until White disappears from view after exiting the bus:



[6] [redacted] is the man wearing a green shirt standing next to [redacted] old investigators that he was sleeping at the time of the incident. He saw a deputy when the rear doors opened, but does not recall the deputy contacting anyone. [redacted] heard a "boom" then covered his face. He did not see a gun.

[7] The frame rate is the number of frames or images a camera can record per second. The higher the frame rate, the smoother the video. If people or objects move faster than the frame rate, it does not capture the continuous movement of those people or objects. The video will appear choppy with broken movement.


8174 3 Rear door Aug 17, 2016 2 56 10 PM PDT
WHITE


8174 3 Rear door Aug 17, 2016 2 56 11 PM PDT


8174 3 Rear door Aug 17, 2016 2 56 12 PM PDT


8174 3 Rear door Aug 17, 2016 2 56 13 PM PDT


8174 3 Rear door Aug 17, 2016 2 56 13 PM PDT
LOMELI


8174 3 Rear door Aug 17, 2016 2 56 14 PM PDT


8174 3 Rear door Aug 17, 2016 2 56 15 PM PDT


8174 3 Rear door Aug 17, 2016 2 56 16 PM PDT


8174 3 Rear door Aug 17, 2016 2 56 16 PM PDT





Criminal Charges

White has been charged with two counts of first degree attempted murder, two counts of assault with a deadly weapon, multiple counts of false imprisonment by violence and two counts of assault on a peace officer. On October 4, 2018, White pled no contest to one count of attempted murder and one count of assault with a deadly weapon. The next court date is set for October 30, 2018.[8]

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury, (2) that the immediate

[8] Felony complaint LA084197.

use of force was necessary to defend against that danger, and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505.*

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances of each particular case...Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say that he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

Police may use deadly force to capture a fleeing suspect who has committed a forcible and atrocious felony. A forcible and atrocious felony is one that "threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333; *People v. Ceballos* (1974) 12 Cal.3d 470, 478-479.

CONCLUSION

The evidence examined shows that without provocation, White stabbed a passenger in the neck and another in the arm while on a Metro bus. White exited the bus and boarded a second bus. After recognizing White as the possible stabbing suspect, the bus operator stopped the bus on Roscoe Boulevard. Deputies approached and boarded the bus in an attempt to detain White. Davidian grabbed White's arm when White ignored Davidian's request to exit the bus. White physically resisted Davidian and armed himself with a knife. White placed Davidian in reasonable fear of being killed or suffering great bodily injury when White advanced toward Davidian with the knife in his hand.

The fact that White's folding knife was closed at the time of the shooting does not alter the analysis in this case. As Davidian noted, it would take White less than a second to open the knife. With the events unfolding so quickly and at close range, the knife posed a deadly threat to Davidian even though it was closed.

[redacted], [redacted] and [redacted] observed White reach behind his back when Davidian grabbed him, although they did not see the knife in White's hands. This can reasonably be explained by their positions in relation to White. Davidian and Lomeli, who saw the knife in White's hand before the shooting, were standing in front of White and in a better vantage point to see his hands. In addition, multiple witnesses observed the knife on the ground immediately after the shooting, further corroborating the fact that White had the knife in his hand at the time of the shooting. The knife can be seen beneath White's back in [redacted]'s cell phone video which she recorded immediately after the shooting. Finally, the bus video captured, and witnesses observed, Davidian retreat from White moments after grabbing his arm. Davidian stated that White did not have anything in his hands when he stepped onto the bus. It is reasonable to infer that something changed to cause Davidian to release White and step back onto the sidewalk. That change in circumstance was White arming himself with a knife.

After stabbing two people, one in the neck, it is not surprising that White did not want to be taken into custody. White ignored Davidian's request to exit the bus, and instead reached for and pulled out his knife. White's actions clearly demonstrated that White was not going to surrender peacefully. White's aggressive action of arming himself with a deadly weapon forced Davidian to make a split-second decision to respond with reasonable deadly force in self-defense and to apprehend a dangerous fleeing felon.

We conclude that Deputy Arin Davidian acted in lawful self-defense and was in lawful pursuit of a dangerous felony suspect when he used deadly force against Gerry White. We are therefore closing our file and will take no further action in this manner.